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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 510

W. T. GRANT COMPANY,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

EUGENE M. FOLEY,
Attorney for
W. T. Grant Company,
Petitioner.

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NATIONAL LABOR RELATIONS BOARD,

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

TO THE HONORABLE THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Your petitioner, W. T. Grant Company, prays that a writ of certiorari issue out of this court to review the decision of the United States Court of Appeals for the Ninth Circuit, rendered on November 10, 1952, affirming a decision of the National Labor Relations Board whereby it was found that your petitioner had violated section 8 (a) (1) and (5) of the National Labor Relations Act, as amended. (Title 29 United States Code section 158 (a) (1) and (5)).

Jurisdiction

The jurisdiction of this court is invoked under the United States Code: section 1254 (1) of Title 28, and section 160 (e) of Title 29.

Opinions Below

The opinion of the United States Court of Appeals (Healy and Pope, Circuit Judges, Harrison, District Judge) has not yet been reported. It is printed in the record pages 215 to 219. The decision and order of the National Labor Relations Board is printed in the record (R. 22 et seq.).

Questions Presented

1. Is a union's demand for bargaining, made before the union obtains authorization cards from a majority of the employees, in an agreed and appropriate bargaining unit, rendered valid *ab initio* by the union's subsequent attainment of cards from a majority?

If the foregoing question is answered in the affirmative, petitioner presents this further question:

2. Where twenty of thirty-nine employees in an agreed and appropriate unit had signed union authorization cards, but there was doubt as to whether one of the twenty had revoked her authorization, would the union's majority status be so clearly established that the employer would not be justified in withholding recognition of the union and maintaining that his employees were entitled to make a free choice in a secret, Board-conducted election?

Statutes Involved

The pertinent provisions of the National Labor Relations Act, as amended, namely sections 8 (a) (1) and (5) and 9 (c) (1) (Title 29 U. S. C sections 158 (a) (1), 158 (a) (5) and 159 (c) (1)) are set forth in the Appendix *infra*, page 10.

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Statement

Petitioner operates a chain of retail stores in several of the United States but only its store in San Jose, California is involved in this proceeding.

On January 5, 1950, (R. 169) the union's business agent visited petitioner's store and informed the store manager that the Retail Clerks Union, whom he represented, had sent him a letter asking for recognition of the union as they felt that a majority of the people working in the store had designated the union as their bargaining representative (R. 125). The following day petitioner's store manager received the letter (R. 70). In it the union requested a bargaining conference. On the same day, January 6, 1950, the writer of the letter, the Secretary-Treasurer of the union, telephoned to the store manager asking what action the store manager was taking on his letter. The store manager answered that he was referring the letter to the company's labor counsel, adding that the union ought to petition the National Labor Relations Board for an election (R. 170). The union official said he would prefer to discuss the matter later with petitioner's labor counsel.* The petitioner's labor counsel met with the union representatives on January 25, 1950. He, too, suggested that the employees should decide, in a secret, Board-conducted election, whether they desired to be represented by a union. On January 31, 1950, a petition for an election was filed, but the union subsequently withdrew it and filed charges that the company had violated section 8 (a) (1) and (5) of the Act.

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* It developed that the union was unwilling to have an election. As the business agent explained it, "I believe we practically insisted that we don't have an election, since it takes so much time and so much nonsensical procedure" (R. 206).

For the sole purpose of narrowing the issue before this court petitioner will concede that it violated section 8 (a) (1).*

There were forty employees in the unit when, on January 5, 1950, the union requested a bargaining conference. At the hearing it was shown that, at that time, eighteen employees had, by means of authorization cards, designated the union as their bargaining representative. It also appeared that three employees signed cards on January 6, 1950, and that one "during the month of January" had revoked her authorization (R. 162-163). Thus, at its high point, counting the revoked card, the union had twenty-one designation cards.**

---

* The alleged violations of section 8 (a) (1) are:

A female supervisor made comments to three female employees, friends of hers, about the wearing of union buttons. In addition, ten weeks before the date scheduled for the election, wages were increased and thirteen (that is one-third of the female employees in the unit) who had been working on a 40 hour-six-day week were put on a 40 hour-five-day week (so that the work-week would be uniform for all female employees) though only one of the thirteen had requested a five day week. There was evidence that both were done merely to meet the competition of petitioner's next-door neighbor, S. H. Kress Company but the Board held that such changes tended to discourage union membership. And finally, petitioner announced that it would never operate a store where union membership was a condition of employment. This, too, was held to violate section 8 (a) (1) though petitioner's announcement followed the union's statement that it would "never go" for an open shop.

** One of the employees who had signed an authorization card left petitioner's employ on January 14, 1950. Thus, when petitioner's labor counsel, on January 25, 1950, met the union's representatives the unit consisted of thirty-nine employees of whom twenty had signed authorization cards.

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Specification of Error

The Court of Appeals erred in regarding the first question as inconsequential "particularly"—to quote the court —"as it appears that the union representative called personally on the manager a few days later and again requested bargaining" (R. 216). (By this it is meant that the union's representative made a demand for bargaining after the union had obtained cards from twenty-one of the forty non-supervisory employees then on the payroll). There is no basis for finding that such a request was made; for there was no demand or request for bargaining other than the demand of January 5, 1950, which was coupled with the misrepresentation of majority status* and neither has the union at any time claimed nor has the Board found that there was any further demand.**

Actually, the business agent's visit to the store, to which the court referred, preceded the receipt of the written request dated January 5, 1950 for a bargaining conference (R. 169). And, of course, the court erred in construing, as

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* It is apparent that the union was of the belief, when it had eighteen authorization cards, that it had cards from a majority of the employees. For when it filed the petition for an election it stated (R. 125) that there were thirty-four employees in the unit.

** Petitioner, on June 21, 1951, moved for a reconsideration of the Board's finding that it had unlawfully refused to bargain (R. 60) and in its brief it characterized the union's invalid demand as no demand, citing *N. L. R. B.* v. *Valley Broadcasting Company*, 189 F. 2d 582. The union's attorney opposed the motion by means of a telegram (R. 213) to the Board worded as follows:

> "VALLEY BROADCASTING CASE NOT IN POINT BECAUSE NO REQUEST FOR BARGAINING MADE BY UNION. IN OUR CASE UNEQUIVOCAL DEMAND MADE ON JANUARY 5, 1950. SEE GENERAL COUNSEL EXHIBIT NUMBER 36. MOTION SHOULD BE DENIED FORTHWITH."

The motion was denied.

a demand for bargaining, the statement that the business agent made on January 5.* Strangely enough, the petitioner is charged with refusing to bargain, not early in January, but on January 25, 1950 and subsequent thereto. On January 25, however, aside from petitioner's statement, on the one hand, of its abhorrence of compulsory union membership and, the union's statement, on the other hand, that it would never permit petitioner to operate an open shop, the meeting was confined entirely to a discussion of ways and means of proving the union's majority status, the petitioner suggesting that it should be done by means of a secret election conducted by the Board and the union insisting "that we don't have an election, since it takes so much time and so much nonsensical procedure" (R. 206). As stated above, no demand for bargaining was made after January 5, 1950.

The court also erred in holding that the union's majority status, as evidenced by the authorization cards, continued through the work-week ending on January 25, 1950. For the record is clear that, during the month of January, one of the employees, Omera Guillory, revoked her authorization.** Unfortunately, your petitioner does not know the

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* The business agent testified (R. 114): "I paid a visit to Mr. Kihs in the San Jose, Grant store following the letter asking the company for recognition. The conversation was very simple; I merely stated to him that I represented the Retail Clerks Union, who had sent him this letter asking for recognition, that we feel that a majority of the people had designated us as their collective bargaining representative, and therefore we feel that we have a right to come into this store and speak to people, the employees of the company, about the Union, call a meeting and such."

** In the Board's brief, as submitted to the Court of Appeals, it is said:

"Even if, *arguendo* Guillory's action were considered a revocation of her authorization of the Union to bargain for her, there is no evidence as to when it occurred other than during the month of January, 1950, or thereafter (R. 162-163) * * *. Absent more

(*Footnote continued on following page*)

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date of her revocation. The union, however, was informed and, conceivably, might have been able to help resolve the question whether her revocation was before, on, or after January 25, 1950. For, following her revocation the union's business agent visited Mrs. Guillory, at her home (R. 163-164) asking her to reconsider or, as he, himself, put it "asking her to join the Union" (R. 130). Neither the union's counsel nor the Board's General Counsel offered any evidence that the revocation occurred after January 25, 1950.

Reasons for Granting the Writ

The court of appeals has decided important questions which have not, but should be, settled by this court, and which, unless they are, will in all probability arise time and again. Let it be said at the outset that your petitioner does not contend that the right of employees to bargain collectively, through an exclusive bargaining representative, should be conditioned upon an antecedent certification by the Board in any case where the majority status of the union is clearly apparent.

But here, petitioner submits, the union could not clearly establish majority status either on January 5, 1950, when it demanded bargaining rights or on January 25, 1950, when its officials conferred with petitioner's labor counsel. Obviously, it would have been improper for petitioner to

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(Footnote continued from preceding page)

specific evidence, the Board was certainly not required to assume that the revocation, if any, occurred before January 25, the date of respondent's wrongful refusal to bargain. If it occurred thereafter, the revocation could, of course, be attributable to respondent's unfair labor practice and hence would not operate to defeat the Union's majority." This argument is specious, particularly as, aside from the alleged refusal to bargain, your petitioner is not and was not charged with having engaged in any unfair labor practice until February 11, 1950, that being the date on which it posted a notice to employees stating that its open shop policy would not be changed.

recognize the union as spokesman for its employees, on either of such dates, particularly as the evidence of the extent of organization, as produced at the hearing held in November, 1950 showed that from the outset about 50% of the employees were opposed to union representation.*

Throughout this proceeding the Board has contended that the petitioner could not have had any genuine doubt as to whether or not the union had majority status but, on the other hand, there has been no suggestion that petitioner made any attempt, at any time to ascertain whether any employee did or did not sign a union card. Standing aloof, as an employer must and as petitioner did, an employer cannot possibly know, except where the union's organizational campaign is openly and visibly successful, whether

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* Anyone engaged in the practice of labor law well knows, and the Board's records will convincingly show, that at a free election, it very often happens that the union receives fewer votes than the number of authorization cards it was able to gather in its organizational campaign. For it is common knowledge that authorization cards are often signed under some sort of pressure exerted by union organizers, whether they be paid organizers or union-minded co-workers, and are not infrequently signed as a result of misrepresentation. Two such instances, both involving this petitioner, occurred in the experience of the writer of this petition. In one of these, involving petitioner's store in *Gadsden, Ala.* (Case No. 10-RC-1204) the union's petition showed that thirteen of a unit of twenty employees had signed authorization cards. But only ten of the employees voted for the union, the election resulting in a tie vote. In the other, involving petitioner's store at *Bellaire, Ohio* (Case No. 8-R-2669) the unit consisted of nineteen employees and whereas ten of these, according to the Union's petition, had signed authorization cards, only three of the nineteen voted for union representation. This was probably the result of petitioner's exposure of deception practiced by the union on the employees, in fraudulently exaggerating the wages and working conditions under the union's existing contracts in the community, the terms of which were actually far less liberal than the conditions which had prevailed, for many years, in petitioner's store. Nevertheless, had the union there taken the steps that the union here has taken the Board would have directed the employer, your petitioner, to bargain on the basis of the authorization cards.

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a majority of his employees signed cards. If the union's right to recognition, in a case such as this, depended on an employer's belief, it would tend to weaken the guarantees of the Act. At best, the employees' protected rights would be made to vary with the state of the employer's mind. On the other hand, if that were the test, it could lead to fraud and collusion between employers and unions.

But, as Judge Learned Hand has said, "the overriding consideration must always be the employees' untrammelled freedom of choice; upon that the whole framework rests" (*N. L. R. B.* v. *Dadourian Export Corporation*, 138 F. 2d 891, 893). In the instant case, however, attention has been focused on the interests of the complaining union and the accused employer. The interests of 50% of the employees who did not want to be represented by the union have been completely forgotten.

Conclusion

Since the union was never in a position clearly to establish its majority status and, in any case, never made a valid demand for bargaining the petition for a writ of certiorari should be granted. The questions involved are as novel as they are important and should be reviewed by this court.

Dated, New York, N. Y., December 12, 1952.

Respectfully submitted,

EUGENE M. FOLEY,
Attorney for W. T. Grant Company,
Petitioner.

Appendix

The pertinent provisions of section 8 (a) (1) and (5) are as follows:

> "(a) It shall be an unfair labor practice for an employer—
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> • • •
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a)."

The pertinent provisions of section 9 (c) (1) are as follows:

> "Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board—
>
> (A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9 (a),* * * the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof."

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OCTOBER TERM, 1952

No. 510

W. T. GRANT COMPANY, a Corporation, Petitioner

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S REPLY BRIEF

EUGENE M. FOLEY,
Attorney for Petitioner.

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In the

Supreme Court of the United States

October Term, 1952

No. 510

W. T. Grant Company, a Corporation, Petitioner

v.

National Labor Relations Board

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY BRIEF

Argument

The Board makes three points in its brief which require comment.

I.

The Board's conception of the questions involved in this proceeding is based on the unwarranted assumption that the Union's majority status was clearly established and that the petitioner had knowledge of the fact. The Board admits, however, that the Union did not represent a majority when it made its only request for a bargaining

conference but, by adding when the request was "mailed to the employer" it indulges in hairsplitting. For there is no evidence at all that the three authorization cards, signed on January 6, 1950 (R. 80, 81 and 82) which gave the Union a putative majority, were signed before the delivery of the request in the morning mail of January 6, 1950.

II.

To narrow the issue before this court, petitioner has conceded that it violated Section 8(a)(1) of the National Labor Relations Act. The Board, however, continues to dwell on that phase of the proceeding though it is not in issue.* For what purpose? It goes without saying that the employer's violation of Section 8(a)(1) did not strip the employees of their right to make a free choice. Obviously, petitioner did not and could not do anything which would stamp, as pro-union, any of the employees who did not desire union representation.

III.

In a footnote on page 6 of the Board's brief it is said that the petitioner's unilateral grant of benefits, held to be a violation of Section 8(a)(5) "even without regard to

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* In claiming that the employer undermined the union, the Board closes its eyes to the conduct of Victor J. Lazzaro, the Union's business agent (R. 114) in turning over "curtains and things" (R. 166), "roughing up of Department 11, which is men's and boy's clothes" (R. 164), "picking up pieces of material and stringing it out over the counter" (R. 168, 184), and urging a customer not to buy in petitioner's store (R. 184). The Union subsequently withdrew its petition. Petitioner suggests that the Board would have stood on firmer ground had it concluded that in the employees' eyes the Union's prestige collapsed under Lazzaro's invasion of petitioner's store, that it was obvious, to the Union, that it could not prevail at an election and thus withdrew its petition.

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petitioner's motive, is not contested here." In this the Board is mistaken. The petitioner contends that this Union was not the true representative of the employees and, that being so, the question whether petitioner was or was not required to bargain with the Union, before granting merit wage increases (and changing the work week of thirteen employees from a six day—40 hour week to a five day—40 hour week) in order to meet competition, is academic.

Respectfully submitted,

EUGENE M. FOLEY,
Attorney for Petitioner.

January 21, 1953.

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Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. V, 151, *et seq.*):	
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In the Supreme Court of the United States

OCTOBER TERM, 1952

No. 510

W. T. GRANT COMPANY, a Corporation, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court below (R. 215-219) has not yet been officially reported. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 22-58) are reported at 94 NLRB 1133.

JURISDICTION

The judgment of the court below was entered on November 10, 1952 (R. 224). The petition for a

writ of certiorari was filed on December 22, 1952. The jurisdiction of this Court is invoked under 28 U.S.C. 1254, and under Section 10 (e) of the National Labor Relations Act, as amended.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, 151 *et seq.*), appear in the Appendix, *infra,* pp. 10-11.

QUESTIONS PRESENTED

1. Whether an employer's refusal to bargain with a union, which represented a majority of his employees at the time he received the union's letter requesting bargaining and at the time he refused to bargain, is excusable because the union did not represent such majority at the time its bargaining request was mailed to the employer.

2. Whether substantial evidence supports the Board's finding, sustained by the court below, that petitioner's insistence upon a Board election as a prerequisite to recognition of the Union was not predicated upon a good faith doubt of the Union's majority status, but was motivated by a desire to gain time to undermine the Union and destroy its majority.

STATEMENT

Following the usual proceedings under Section 10 of the Act, the Board found, and the court below agreed, that petitioner violated Section 8 (a) (1) and (5) of the Act, (1) by refusing to recognize and bargain collectively with Retail Clerks Union,

Local 428, AFL (herein called the Union), (2) by unilaterally granting the employees benefits in the face of the Union's request to bargain, and (3) by interrogating its employees and by threatening to close the store rather than accede to a union shop. Petitioner challenges the decision below only insofar as it sustains the Board's finding of a refusal to recognize and bargain with the Union, in violation of Section 8 (a) (5).

A. *The facts as found by the Board*—On January 6, 1950, Francis J. Kihs, the manager of petitioner's store in San Jose, California (R. 37; 152), received in the mail the Union's request for a collective bargaining conference (R. 37; 70-71, 169-170). Kihs forwarded the Union's request to Eugene M. Foley, petitioner's attorney in New York, who arranged to meet with the Union (R. 71-72). The meeting was held on January 25 (R. 23, 37; 99-100, 112). At that time the Union held cards, signed between January 4 and January 6 by 20 of the 39 employees in the bargaining unit, designating the Union as the employees' bargaining representative (R. 23; 79-94, 96-99, 148-149).[1]

At the meeting, the Union proposed that petitioner check the authorization cards or employ "any other quick procedure" for ascertaining the Union's majority status, but Foley insisted upon a Board election before granting the Union's request for bargaining, and suggested that the Union

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[1] An additional employee had signed an authorization card (R. 95), but apparently left petitioner's employ before January 25.

file a representation petition with the Board (R. 23, 38; 100-102, 115-116, 186). Accordingly, the Union filed such a petition on January 31 (R. 38; 103, 121-127). Petitioner further insisted upon a formal hearing on the petition and refused the Union's request that it consent to an immediate election, notwithstanding the absence of any real issue other than the one to be determined by the election itself (R. 38-39; 69-70, 73-74, 76-78, 108, 117, 120, 121-127).[2]

Early in February, Manager Kihs, without consulting or notifying the Union, called a meeting of the employees in the store and announced that petitioner would grant certain merit wage increases to 23 of the employees and that 13 employees would have their work week changed from 6 days to 5 days, a change generally favored by the employees (R. 23-24, 39; 108-109, 137, 141-142, 143-144, 152-154, 156). These benefits became effective during the work week ending February 23 (R. 23-24, 39; 142, 143-144, 146, 152-154). Kihs had never before granted so many wage increases at one time; indeed he could not recall any prior occasion when such increases had been granted on a group basis (R. 39-40; 155-156). Nor did Kihs offer any explanation for his concurrent action in reducing the number of workdays of the 13 employees, although

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[2] The hearing was held on March 3, and on April 4, the Board issued its order directing the holding of an election (R. 39; 103-107, 121). The election was scheduled for May 3 (R. 39; 110). It was never held, however, because prior to the scheduled date the Union withdrew its petition and filed the unfair labor practice charge herein (R. 39; 108).

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he testified that one of the employees had requested such a change (R. 41; 156-157).

In March, Employee Putney, who was wearing a Union button while at work, was asked by Mrs. Kleidon, assistant manager of the store (R. 50; 143), whether she was the only girl in the store who belonged to the Union (R. 50; 144). Mrs. Putney thereupon removed the button (R. 50; 145). In April, Mrs. Kleidon asked Employee Nix why she still wore her Union button, and Miss Nix thereafter wore the button "on the underneath side" of her sweater (R. 50; 150-151). During the period from February through April, petitioner informed its employees that it intended to maintain an open-shop policy, and stated that "if we can't do business in San Jose on an open-shop basis, we just won't do business in San Jose" (R. 24-25, 42-44; 138-141, 145-146).

B. *The Board's conclusions and order*—Upon the above facts, the Board concluded that petitioner's interrogation of its employees concerning Union membership, its unilateral grant of benefits to its employees with the intent to discourage Union membership, and its threat to close its San Jose store rather than accede to a union shop, interfered with, restrained and coerced the employees in the exercise of their rights under Section 7 of the Act, thereby violating Section 8 (a) (1) (R. 23-24, 42, 46-49, 51).[3] The Board further concluded, in view of these unfair labor practices, that peti-

[3] These findings and conclusions are not challenged here (Pet. 4).

tioner's "insistence upon a Board election was not motivated by a good faith doubt concerning the Union's majority status, but rather by a desire to gain time to undermine the Union and destroy its majority," and that therefore petitioner's refusal to bargain with the Union since January 25, 1950, violated Section 8(a) (5) and (1) of the Act (R. 23-24, 52-53).[4]

Accordingly, the Board entered its customary order requiring petitioner to cease and desist from the unfair labor practices found, and directing petitioner to bargain with the Union upon request (R. 27-29, 32-33).

C. *Proceedings in the Court of Appeals*—The court below rejected as "specious" petitioner's contention that the Union's written request to bargain was rendered nugatory by the fact that the Union lacked a majority on the day the request was mailed (R. 216). It noted the complete absence of evidence to rebut the Board's finding that the Union's majority status, which was established on January 6, the day petitioner received the Union's request, continued through the work week ending January 25, when petitioner refused to bargain (*ibid.*). The court said: "Having in mind [petitioner's] activities following the meeting of January 25, we think the Board was not in error in finding that the insistence upon an election was not motivated by a good faith doubt of the union's

[4] The Board's additional conclusion that petitioner's unilateral grant of benefits constituted an independent violation of Section 8(a)(5) even without regard to petitioner's motive (R. 24, n. 4) is not contested here.

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majority, but by a purpose to gain time in which to undermine the union and vitiate its majority" (R. 217). Accordingly, the court granted enforcement of the Board's order in full (R. 220-224).

ARGUMENT

1. Petitioner's contention that its refusal to bargain with the Union was excusable because, on January 5—the day the Union's bargaining request was mailed—the Union had not been designated as their bargaining representative by a majority of the employees is, as the court below characterized it, "specious" (R. 216). Petitioner concedes, for the purpose of this question (Pet. 3-4), that the Union obtained a majority by January 6, when petitioner received the Union's bargaining request, and that the Union retained its majority through January 25, when petitioner refused to bargain. Moreover, the Board found, and the court below agreed, that petitioner at no time had a good faith doubt that the Union represented a majority of the employees. Thus whatever may have been the situation at the time the Union mailed its request to bargain, by the time the Company received it and thereafter acted upon it, the Union's majority had been established, and no more was required.

2. The facts set forth in the Statement (*supra,* pp. 3-5) amply support the Board's finding, sustained by the court below, that petitioner's insistance upon a Board election as a prerequisite to its recognition of the Union was not motivated by a good faith doubt of the Union's majority status, but rather by a desire to gain time to undermine

such status. While the Union had only a one-vote majority, that fact alone was not sufficient to establish that the Company had a genuine doubt as to the Union's majority, in view of the other circumstances indicating the Company's bad faith. The Board and the court below correctly concluded, therefore, that petitioner's refusal to recognize and bargain with the Union, since it was not motivated by a good faith doubt of majority, was in violation of Section 8 (a) (5) of the Act. *Joy Silk Mills, Inc.* v. *National Labor Relations Board,* 185 F. 2d 732, 741 (C.A.D.C.), certiorari denied, 341 U.S. 914; *National Labor Relations Board* v. *Kobritz,* 193 F. 2d 8, 14 (C.A. 1). In any event, "Granting of the writ would not be warranted merely to review the evidence or inferences drawn from it." *General Pictures Co.* v. *Electric Co.,* 304 U.S. 175, 178.

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CONCLUSION

The decision of the court below is plainly correct and presents neither a conflict of decisions nor any question warranting review. The petition for a writ of certiorari should be denied.

Respectfully submitted,

WALTER J. CUMMINGS, JR.,
Solicitor General.

GEORGE J. BOTT,
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DAVID P. FINDLING,
Associate General Counsel,

BERNARD DUNAU,
MARCEL MALLET-PREVOST,
IRVING M. HERMAN,
Attorneys,
National Labor Relations Board.

JANUARY, 1953.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Supp. V, 151, *et seq.*) are as follows:

* * * * *

UNFAIR LABOR PRACTICES

Sec. 8. (a) It shall be an unfair labor practice for an employer—

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

* * * * *

REPRESENTATIVES AND ELECTIONS

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

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Sec. 10. * * *

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(e) The Board shall have power to petition any circuit court of appeals of the United

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States * * * within any circuit or district, r
spectively, wherein the unfair labor practic
in question occurred or wherein such perso
resides or transacts business, for the enforc
ment of such order and for appropriate tem
porary relief or restraining order, and sha
certify and file in the court a transcript of th
entire record in the proceedings, including th
pleadings and testimony upon which suc
order was entered and the findings and orde
of the Board. Upon such filing, the court shal
cause notice thereof to be served upon suc
person, and thereupon shall have jurisdictio
of the proceeding and of the question deter
mined therein, and shall have power to gran
such temporary relief or restraining order a
it deems just and proper, and to make an
enter upon the pleadings, testimony, and pro
ceedings set forth in such transcript a decre
enforcing, modifying, and enforcing as s
modified, or setting aside in whole or in par
the order of the Board. * * * The jurisdic
tion of the court shall be exclusive and its judg
ment and decree shall be final, except that th
same shall be subject to review * * * by th
Supreme Court of the United States upon wri
of certiorari or certification as provided i
sections 239 and 240 of the Judicial Code, a
amended (U. S. C., title 28, secs. 346 and 347)

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